



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2022-0910; FRL-10564-01-R9]

#### Air Quality Implementation Plan; CA; El Dorado County Air Quality Management

#### District; Stationary Source Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the El Dorado County Air Quality Management District (EDCAQMD) portion of the California State Implementation Plan (SIP). In this action, we are proposing to approve a rule submitted by the EDCAQMD governing the issuance of permits for stationary sources, focusing on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or “the Act”). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0910 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web,

cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Camille Cassar, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) -947-4164; or by email to [cassar.camille@epa.gov](mailto:cassar.camille@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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### I. The State’s Submittal

- A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal, including the date on which it was adopted by the District and the date on which it was submitted to the EPA by the California Air Resources Board (CARB or “the State”).

**Table 1 Submitted Rule**

Rule #	Rule Title	Adopted	Submitted
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Rule 523-1	Federal Non-Attainment New Source Review	December 7, 2021	March 9, 2022
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For areas designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the applicable SIP must include preconstruction review and permitting requirements for new or modified major stationary sources of such nonattainment pollutant(s) under part D of title I of the Act, commonly referred to as Nonattainment New Source Review (NNSR). The rule listed in Table 1 contains the District’s NNSR permit program applicable to new and modified major sources located in areas designated nonattainment for the ozone and/or PM<sub>2.5</sub> NAAQS.

On September 9, 2022, the submittal for Rule 523-1 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.<sup>1</sup>

*B. Is there any other version of this rule?*

There is no previous version of Rule 523-1 in the California SIP. There are other New Source Review (NSR) rules in the California SIP that apply to the sources to which Rule 523-1 also applies, including Rule 523, “New Source Review,” which was adopted by the District on April 26, 1994. Rule 523-1 is intended to satisfy current federal NNSR requirements applicable to ozone and PM<sub>2.5</sub>, as well as related visibility program requirements. Other existing SIP-approved NSR rules such as the SIP-approved version of Rule 523 will also remain in the SIP to continue to impose certain requirements for stationary sources that are beyond the scope of Rule 523-1. Rule 523-1 provides that for purposes of its implementation and enforcement, its provisions take precedence over the provisions and requirements in other District rules and regulations (see Rule 523-1, Section 1.1, paragraph (a)).

*C. What is the purpose of the submitted rule?*

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<sup>1</sup> The submittal was transmitted to the EPA via a letter from CARB dated March 9, 2022.

Rule 523-1 is intended to address the CAA's statutory and regulatory requirements for NNSR permit programs for major sources emitting nonattainment air pollutants and their precursors located in the areas within the District that are designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS).

## **II. The EPA's Evaluation**

### *A. What is the background for this action?*

Because parts of El Dorado County are designated as federal ozone and PM<sub>2.5</sub> nonattainment areas, the CAA requires the District to have a SIP-approved NNSR program for new and modified major sources located in the ozone and PM<sub>2.5</sub> nonattainment areas that are under its jurisdiction. Most recently, the designation of parts of El Dorado County as a federal ozone nonattainment area for the 2008 and 2015 ozone NAAQS, and the 2006 PM<sub>2.5</sub> NAAQS, triggered the requirement for the District to develop and submit an updated NNSR program to the EPA for SIP approval.

The District's NNSR program must address NNSR requirements for the 1979, 1997, 2008, and the 2015 ozone NAAQS, as well as the 2006 PM<sub>2.5</sub> NAAQS.<sup>2</sup>

The District's NNSR program must meet the NNSR requirements for areas classified as Severe nonattainment. The ozone nonattainment area within the District is currently classified as Severe nonattainment for the 2008 ozone NAAQS and as Serious nonattainment for the 2015 ozone NAAQS. In addition, although the EPA revoked the 1979 ozone NAAQS in El Dorado County effective June 15, 2005,<sup>3</sup> and revoked the 1997 ozone NAAQS effective April 6, 2015,<sup>4</sup> the NNSR requirements applicable to the nonattainment area in El Dorado County based on its designation and classification as Severe for these revoked NAAQS remain in order to prevent future emissions from new and modified major stationary sources from increasing beyond the

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<sup>2</sup> The relevant nonattainment designation and classification history for the ozone and PM<sub>2.5</sub> NAAQS for El Dorado County is provided in our Technical Support Document (TSD) for this action, which can be found in the docket for this rule. Information regarding the District's attainment/nonattainment status for other criteria pollutants is also included in our TSD.

<sup>3</sup> See 70 FR 44470, 44475 (Aug. 3, 2005)

<sup>4</sup> 80 FR 12264, 12265 (March 6, 2015).

levels allowed, based on the area's prior designation and classification for these NAAQS.<sup>5</sup> Submission of an NNSR program that satisfies the requirements of the Act and EPA's regulations for Severe ozone nonattainment areas would also satisfy the NNSR program requirements for Serious ozone nonattainment areas.<sup>6</sup> The District's NNSR program must also satisfy the NNSR requirements applicable to Moderate PM<sub>2.5</sub> nonattainment areas.<sup>7</sup>

We note that, in 2000, the EPA issued a limited approval and limited disapproval of District Rule 523, adopted on April 26, 1994, which was intended to address the then-applicable NNSR program requirements, and which incorporated Rule 523 into the California SIP.<sup>8</sup> The District's current NNSR rule, Rule 523-1, which is the subject of our current action, is intended to meet the currently applicable NNSR program requirements for the District, which would also resolve all the deficiencies with the District's NNSR program that formed the basis for the EPA's limited disapproval in 2000 in its action on Rule 523.

In addition, to implement CAA section 169A, 40 CFR 51.307(b) requires that NNSR programs provide for review of any major stationary source or major modification that may have an impact on visibility in any mandatory Class I Federal area.<sup>9</sup>

*B. How is the EPA evaluating this rule?*

The EPA reviewed Rule 523-1 for compliance with CAA requirements for: (1) stationary source preconstruction permitting programs as set forth in CAA part D, including CAA sections

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<sup>5</sup> The EPA determined in 2012 that the ozone nonattainment area in El Dorado County had attained the 1979 ozone NAAQS, which suspended the requirement to submit those SIP elements related to attainment of these NAAQS for so long as the area continues to attain, but did not suspend the requirement to submit an NNSR program. 77 FR 64036 (Oct. 18, 2012); 40 CFR 51.1118.

<sup>6</sup> The NNSR requirements applicable to Severe ozone nonattainment areas include the same requirements that apply to Serious ozone nonattainment areas, but Severe ozone nonattainment areas are also subject to certain additional and more stringent requirements. See generally CAA sections 182(c) and 182(d) and 40 CFR 51.165.

<sup>7</sup> The EPA determined in 2017 that the PM<sub>2.5</sub> nonattainment area in El Dorado County had attained the 2006 24-hr PM<sub>2.5</sub> NAAQS by the applicable attainment date. 82 FR 21711, 21713 (May 10, 2017). The EPA's determination that the PM<sub>2.5</sub> nonattainment area in El Dorado County had attained the 2006 PM<sub>2.5</sub> NAAQS by the applicable attainment date suspended the requirements to submit those SIP elements related to attainment of these NAAQS for so long as the area continues to attain, but did not suspend the requirement to submit an NNSR program. 40 CFR 51.1015.

<sup>8</sup> (Feb. 2, 2000); see also 64 FR 53973 (Oct. 5, 1999) (notice of proposed rulemaking).

<sup>9</sup> Such sources are required to perform a visibility impact analysis consistent with the provisions of 40 CFR 51.307(a)-(c) and 40 CFR 51.166(o), (p)(1) through (2) and (q). 40 CFR 51.307(d) also provides for states to require monitoring of visibility in any Federal Class I area near the proposed new major stationary source or major modification.

172(c)(5), 173, 182, and 189; (2) the review and modification of major sources in accordance with 40 CFR 51.160-51.165 as applicable in Severe ozone nonattainment areas as well as Moderate PM<sub>2.5</sub> nonattainment areas; (3) the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I Federal area in accordance with 40 CFR 51.307; (4) SIPs in general as set forth in CAA sections 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i);<sup>10</sup> and (5) SIP revisions as set forth in CAA section 110(l)<sup>11</sup> and 193.<sup>12</sup> Our review evaluated the submittal for compliance with the NNSR requirements applicable to nonattainment areas classified as Severe for ozone and Moderate for PM<sub>2.5</sub>, and ensured that the submittal addressed the NNSR requirements both the 2008 and 2015 ozone NAAQS, as well as the 2006 PM<sub>2.5</sub> NAAQS. As part of our analysis, we reviewed whether Rule 523-1 resolved all the deficiencies with the District's NNSR program that formed the basis for the EPA's limited disapproval in 2000 in its action on Rule 523.

*C. Does this rule meet the evaluation criteria?*

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the March 9, 2022 submittal of Rule 523-1, we find that the District has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of this rule to the EPA.

With respect to the substantive requirements found in CAA sections 110(a)(2)(C), 172(c)(5), 173, 182, 189, and 40 CFR 51.160-51.165, we have evaluated Rule 523-1 in

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<sup>10</sup> CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and CAA section 110(a)(2)(E)(i) requires that states have adequate personnel, funding, and authority under state law to carry out their proposed SIP revisions.

<sup>11</sup> CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by states to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

<sup>12</sup> CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

accordance with the applicable CAA and regulatory requirements that apply to NNSR permit programs under part D of title I of the Act for all relevant ozone NAAQS as well as the 2006 PM<sub>2.5</sub> NAAQS. We find that Rule 523-1 satisfies these requirements as they apply to sources subject to the NNSR permit program requirements for ozone nonattainment areas classified as Severe and PM<sub>2.5</sub> nonattainment areas classified as Moderate. Further, we determined that Rule 523-1 resolved all the deficiencies with the District's NNSR program that formed the basis for the EPA's limited disapproval in 2000 in its action on Rule 523.

We have also determined that this rule satisfies the related visibility requirements in 40 CFR 51.307. In addition, we have determined that Rule 523-1 satisfies the requirement in CAA section 110(a)(2)(A) that regulations submitted to the EPA for SIP approval be clear and legally enforceable and have determined that the submittals demonstrate in accordance with CAA section 110(a)(2)(E)(i) that the District has adequate personnel, funding, and authority under state law to carry out this proposed SIP revision.

Regarding the additional substantive requirements of CAA sections 110(l) and 193, our action will result in a more stringent SIP, while not relaxing any existing provision contained in the SIP. We have concluded that our action would comply with section 110(l) because our approval of Rule 523-1 will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our approval of Rule 523-1 will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of the nonattainment pollutants and their precursors in the District; accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

Our TSD contains a more detailed discussion of our analysis of Rule 523-1.

### **III. Proposed Action and Public Comment**

As authorized in section 110(k)(3) of the Act, the EPA is proposing to approve the submitted rule because it fulfills all relevant CAA requirements, and resolves all deficiencies

with the District's NNSR program that the EPA identified in our limited disapproval action in 2000. We have concluded that our approval of the submitted rule would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 172(c)(5), 173, 182, 189 and 193, and 40 CFR 51.160-51.165 and 40 CFR 51.307. If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220a (Identification of plan-in part).

In conjunction with the EPA's SIP approval of the District's visibility provisions for sources subject to the NNSR program as meeting the relevant requirements of 40 CFR 51.307, this action would also revise the regulatory provision at 40 CFR 52.281(d) concerning the applicability of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 as it pertains to California, to provide that this FIP does not apply to sources subject to review under the District's SIP-approved NNSR program.

We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**.

#### **IV. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rule listed in Table 1 of this preamble. The rule governs the issuance of permits for stationary sources, focusing on the preconstruction review and permitting of major sources and major modifications under part D of title I of the CAA. The EPA has made, and will continue to make, this document available electronically through <https://www.regulations.gov> and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40

CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) (EO 12898) directs

Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The District did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: March 24, 2023.

Martha Guzman Aceves  
Regional Administrator,  
Region IX.

[FR Doc. 2023-06563 Filed: 3/30/2023 8:45 am; Publication Date: 3/31/2023]